

May 10, 2005

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Re: Loans to [] County Sheriff's Office.

Dear Mr. []:

Chairman Johnson asked our office and Region [] to review your submission, dated [], regarding loans your credit union made to the [] County Sheriff's Office. We have consulted with the Region and fully considered the information you provided but continue to conclude the loans do not meet any exception to the definition of a member business loan (MBL) under NCUA's regulations. 12 C.F.R. Part 723.

You do not dispute that the loans your credit union made to the Sheriff's Office are business loans but contend they meet the requirements for an exception to the general definition of an MBL. You contend the loans meet the exception for loans where a federal or state agency or its political subdivision fully insures or fully guarantees repayment. 12 C.F.R. §723(b)(4).

You note two reasons in support of your view. First, you note an opinion from the Director of Finance for the Clerk of the Court as assurance that any debt of the Sheriff's Office will be honored by the County Commissioners in the appropriations for the Sheriff's Office. Second, you suggest our view would preclude any loan to a government entity, with a term greater than one year, from ever qualifying for the MBL exception for a government guaranteed loan because loan payments would always be part of a government entity's year-to-year budget process.

We do not question that a debt properly incurred by the Sheriff's Office will be part of the County Commissioners budget for that office. Nevertheless, the fact that the loan payments are part of the County's budget is not the separate insurance or guarantee agreement by a government entity the exception requires.

The exception in the MBL definition for loans fully insured or guaranteed by a federal or state agency means there is a separate promise – apart from the loan with the borrower – by a government agency in the form of a guarantee or insurance agreement to repay the loan if the borrower defaults. 12 U.S.C. §1757a(c)(1)(B)(iv); 12 C.F.R. §723.1(b)(4). The loan between the credit union and the Sheriff's Office does not have a separate promise to pay the obligation in full by a political subdivision with the authority to guarantee repayment.

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Accepting your premise would mean that any loan to a government entity is automatically excepted from the rule. A department within an agency or political subdivision may be authorized by law to enter into contracts and expend money. When it receives a loan from a credit union, it is the principal borrower. Although the Finance Director confirmed the budgetary process for the Sheriff's Office, his letter is not an enforceable guarantee or insurance agreement.

Regarding your second point, we note a loan to a government entity with a term longer than one year and subject to annual budgets can meet the government guarantee exception. In your case, however, we find that there is no separate government guarantee or insurance that provides for repayment but only a loan to the Sheriff's Office.

We believe the loan would qualify for the government guaranteed loan exception in the MBL rule if the County provides a separate guarantee promising to pay the loan in full if the Sheriff's Office defaults on the loan. A county government is a political subdivision of a state that may fully guarantee or fully insure a loan as contemplated in the rule's government guarantee exception. 12 C.F.R. §723.1(b)(4). The conditions to the exception would be met if the appropriate body authorized to bind the County contracts to fully guarantee or fully insure the loan to the Sheriff's Office. In that event, your credit union would not be required to have an MBL program that complied with Part 723 of NCUA's rules.

Sincerely,

/s/

Sheila A. Albin
Associate General Counsel

OGC/CJL/SAA:bhs
05-0235

cc: Chairman Johnson
Regional Director Swann